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Vocational Rehabilitation

· DWC'S NINTH ANNUAL EDUCATIONAL CONFERENCE

February 27-28, 2002 and March 4-5, 2002

VOCATIONAL REHABILITATION
STATUTE OF LIMITATIONS – CASE LAW

Presenter: Adel Serafino

I. Statute of Limitations

Labor Code § 5410 - Time limits; proceedings for aggravated disabilities (subsequent request for vocational rehabilitation benefits).

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation, including vocational rehabilitation services, within five years after the date of the injury upon the ground that the original injury has caused new and further disability or that the provision of vocational rehabilitation services has become feasible because the employee's medical condition has improved or because of other factors not capable of determination at the time the employer's liability for vocational rehabilitation services otherwise terminated. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Labor Code § 5407.

Labor Code § 5405.5 Time limits for employee's request for vocational rehabilitation benefits (initial requests).

Except as otherwise provided in Labor Code § 4644 and § 5410, the period within which an employee may request vocational rehabilitation benefits provided by Article 2.6 (commencing with §4635) of Part 2 of Chapter 2 is one year from the date of the last finding of permanent disability by the appeals board, or one year from the date the appeals board approved a compromise and release of other issues.

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Martinez, Josephine vs WCAB (Court of Appeal, 2nd Appellate District, Division Four) November 15, 2000

Request for reinstatement of VR benefits made after an interruption period ended and more than 5 years from date of injury was considered an "initial" request and timely since the request was made within one year of the last adjudication of permanent disability and before any adjudication of vocational rehabilitation. Court of Appeal held that the request letter dated 6/4/98 was an "initial" request under Labor Code §5405.5 and it was not disputed that the request was timely. Court also held that since the initial request was timely and there was no previous adjudication of vocational rehabilitation before the request and defendant did not request termination of vocational rehabilitation services, applicant's request to resume vocational rehabilitation services was not barred by statute of limitations of Labor Code 5405.5; held that Labor Code §5405.5 only limited time to initially request vocational rehabilitation, not to complete vocational rehabilitation or end interruption of vocational rehabilitation beyond Labor Code §5405.5 period.

65 CCC 310
Scott, Pamela vs WCAB (Court of Appeal, 2nd Appellate District, Division Three) February 28, 2000

Time to request – WCAB held applicant's 9/13/96 request for resumption of vocational rehabilitation services involving a 4/8/91 injury was barred by statute of limitations of Labor Code §5410 WCAB found applicant's 9/13/96 request for vocational rehabilitation services involving 4/8/91 injury was not timely under Labor Code §5410 when AME in 1993 indicated applicant was not a qualified injured worker and no new medical evidence was presented until 2/3/97 when the same AME indicated that applicant might have been a Qualified Injured Worker. When injury occurred on 4/8/91, and AME stated in 1993 that applicant was not a qualified injured worker, but in 6/8/96 and 1997 reports the AME reconsidered the issue of whether applicant was a qualified injured worker, WCAB refused to toll time requirements for requesting vocational rehabilitation services. WCAB found applicant's 2/15/96

Petition to Reopen was a petition to reopen for new and further disability, not a request for vocational rehabilitation services; WCAB also found no medical evidence as of 2/15/96 that applicant was a qualified injured worker. WCAB found under Labor Code §5410 applicant had five years from date of injury or one year from last finding of permanent disability to request vocational rehabilitation services, not one year from last medical treatment payment made pursuant to a stipulated award.

60 CCC 1158
Visalia School District, vs WCAB (Hernandez, Lupe)
(Court of Appeal, 5th Appellate District) December 7, 1995

Request for Benefits – WCAB properly held applicant's telephone call to defendant's claims administrator requesting vocational rehabilitation benefits was a "request" for vocational rehabilitation benefits under Labor Code §5405.5, and that written request was not required.

57 CCC 82
Roberts, David vs WCAB **(Court of Appeal, 1st Appellate District, Division Three) February 11, 1992**

Initial request for vocational rehabilitation benefits made within one year of order approving compromise and release but more than five years after date of injury is timely under Labor Code §5405.5.

Court held that applicant's request for rehabilitation was an "initial" request pursuant to *Sanchez v. WCAB* **and** *Youngblood v WCAB***. On May 15, 1986, applicant filed an application for adjudication of claim with the Board, alleging that he sustained injustrial injury to his spine on June 20, 1983 while employed as a laborer by Georgia Pacific Corporation (GPC). Applicant checked all of the benefits listed on the application including "rehabilitation." Five days later, applicant sent GPC a letter demanding vocational rehabilitation and to appoint a counselor. However, applicant did not initiate proceedings before the Rehabilitation Bureau or further pursue rehabilitation benefits at that time. On August 15, 1988, the matter in chief proceeded to conference before the WCJ in Santa Rosa regarding applicant's entitlement to workers' compensation benefits other than rehabilitation. Parties negotiated a settlement and filed a C&R on the same date. The WCJ determined the C&R sum of $6,000 was reasonable and issued an order**

of approval on August 16, 1988. On April 21, 1989, applicant wrote to GPC and requested rehabilitation benefits, but GPC refused and on May 2, 1989, defendant filed a "Request for Dispute Resolution" with the Bureau objecting to rehabilitation on the grounds that applicant's request was untimely. On May 3, 1989, more than five years after the date of injury, but within one year of the date of approval of the C&R, applicant filed a "Request for Order of Rehabilitation Benefits" thereby initiating rehabilitation proceedings before the Bureau. The Bureau issued an order deferring action pending Board resolution of the statute of limitations issue raised by GPC. Subsequently, the WCJ stated that Labor Code §5405.5 did not apply because applicant's request for rehabilitation was not an initial request (because of the original request made on May 15, 1986 on the application for adjudication). On February 19, 1991, applicant petitioned for reconsideration and the Board denied the petition citing *Sanchez* and *Youngblood*. The Board stated that in May 1989 when applicant initiated proceedings before the Bureau, he was making his second request for rehabilitation and because the request to the Bureau was almost six years after date of injury, the WCJ was correct that the request was barred under Labor Code §5410.

The DCA had to determine if the request made by applicant was an "initial" request subject to §5405.5 or whether the check mark placed next to "rehabilitation" in Paragraph 9 of the application for adjudication renders it a supplemental request subject to §5410. The Court then discussed *Sanchez* and *Youngblood* and ultimately held that both cases held that §5405.5 operates to extend the time for filing an initial request or original request for rehabilitation beyond the five years from date of injury as long as the request is filed within one year from the Board's last find of PD or within one year from the date of the Board's approval of a C&R of other issues. The Court eventually held that although applicant checked off rehabilitation as an issue, it was never adjudicated either by the Bureau or the Board with regard to entitlement. Indicating rehabilitation as an issue on the application filed is "irrelevant" The Board has continuing jurisdiction to adjudicate claims for rehabilitation benefits under §5405.5 and thus the applicant's request made to the Bureau on May 3, 1989 which was within one year of the order approving the C&R was timely under this section.

56 CCC 21

Vasquez, Ruben vs WCAB **(Court of Appeal, 2nd Appellate District, Division Four) January 7, 1991**

Raising Issue of vocational rehabilitation benefits by indicating the existence of a dispute over such benefits in an application for adjudication of claim is sufficient to constitute a request for rehabilitation benefits within the statute of limitations even absent formal request with the Rehabilitation Bureau.

On 8/4/81, applicant filed an application for workers' compensation benefits, alleging that on 6/3/81 he sustained industrial injury to his right knee during employment as a messenger and driver (motor messenger) by Pacific Telephone and Telegraph Company in the San Luis Obispo area. He alleged disagreement regarding entitlement to vocational rehabilitation benefits. Although applicant raised issue with regard to entitlement to vocational rehabilitation in his application for adjudication, he never filed a formal request for rehabilitation benefits with the Rehabilitation Bureau. In May 1982, after a period of TD, applicant returned to work in his usual occupation as a motor messenger performing his normal duties. Parties stipulated that applicant sustained industrial injury to his right knee resulting in 25 _ percent PD and the WCJ awarded such per the stipulations. Then in 1984, applicant was transferred to San Francisco to continue work as a motor messenger. Although applicant had the same general duties, the San Francisco position was more arduous than the San Luis Obispo job. Ultimately, applicant petitioned to reopen on the grounds of new and further disability and also filed an application in which he alleged he sustained cumulative injury to the right knee and spine during the period of June 3, 1983 to March 1985. Petition to reopen was granted and the WCJ found that applicant did sustain injuries to the back and right hip on June 3, 1983 but that he did not sustain cumulative injury and found no increase in permanent disability.

On April 4, 1989, the Bureau concluded applicant was barred by Labor Code §5430 and 5804 from obtaining rehabilitation benefits because "a proper and timely request for rehabilitation benefits was not made before the Bureau" and also determined that the applicant was not medically eligible for rehabilitation benefits because he was able to return to his usual and customary job in San Luis Obispo stating, "To find the employee entitled to Labor Code §339.5 benefits by virtue of the

effects of a modified job provided to the employee four years after the date of injury, is entirely unreasonable. This logic would then hold all employers perennially liable for ….benefits when the economic requirements of business called for the demise or modification of jobs!"

Applicant appealed and the WCJ denied the appeal. Applicant filed for reconsideration which was denied. Applicant filed for Writ of Review which was granted. Applicant contended his request for rehabilitation benefits was not barred because he requested rehabilitation benefits in a timely-filed application and further contended he was medically eligible for rehabilitation because as a result of the industrial injury he is permanently precluded from engaging in his usual and customary occupation. The December 1, 1989 order of WCAB denying reconsideration was annulled and the matter remanded back to the Board.

54 CCC 489
Youngblood, Robert vs WCAB **(Court of Appeal, 1st Appellate District, Division Four) December 15, 1989**

Time Limitations on the Appeals Board – Because Labor Code §5405.5 applies only to original requests for rehabilitation, applicant's request for rehabilitation that was not original and that was filed within one year after the last finding of permanent disability but more than five years after his injury was barred by the five-year limitation of Labor Code §5410.

The Board held that it did not have jurisdiction under Labor Code §5404 and §5803 through 5805 to consider applicant's request for rehabilitation presented after five years from the date of injury. The Board further held that §5405.5 applies only to initial requests for rehabilitation. Applicant contended that his request for rehabilitation, although not an initial request, is timely under §5405.5 because it was presented within one year of the last finding of permanent disability. Defendant argued that applicant's request for rehabilitation was barred by the five year limitation in §5410. The DCA affirmed the Board's decision.

Applicant had sustained an industrial right knee injury on October 3, 1978 while working as a bus driver for the City of San Francisco. An F&A issued on March 9, 1982 awarding a PD of 22% and future medical

treatment. Sometime in 1982, applicant initiated proceedings before the Rehabilitation Bureau regarding entitlement to vocational rehabilitation. On July 8, 1982, following an IME opinion, the Bureau rendered a Decision & Order finding that applicant was not a qualified injured worker under Labor Code §139.5. Applicant did not appeal from this decision.

On May 4, 1983, applicant filed a petition to reopen under Labor Code §5410 alleging "new and further permanent disability," but it did not allege a need for vocational rehabilitation as a ground for reopening. In September of the same year, applicant filed a medical report in support of his petition to reopen wherein the doctor stated that applicant was not able to return to work as a bus driver as a result of his industrial knee injury and gave an increase rating of permanent disability that basically limited applicant to light work. In May of 1985, a conference was held before the WCJ and the minutes of the conference do not mention a claim for vocational rehabilitation. A hearing was held before the WCJ on September 9, 1985 and entitlement to vocational rehabilitation was not raised. Further findings issued on August 15, 1986 finding that applicant's permanent disability had increased to 53% and the WCJ granted applicant's petition to reopen for new and further disability. The WCJ made no findings regarding vocational rehabilitation; applicant did not petition for reconsideration.

By letter to defendant on October 27, 1986, over eight years from the date of injury, but within one year from the last finding of permanent disability, applicant requested rehabilitation. The defendant refused and applicant sought a decision and order from the Bureau to provide rehabilitation. Bureau issued its decision on July 22, 1987 finding that the City was not obliged to provide rehabilitation because the issue of whether applicant was qualified injured worker as addressed in 1982 and more than five years had elapsed since the industrial injury. Applicant appealed from this decision. The WCJ upheld the Bureau decision on February 17, 1988 and the Board issued its decision denying applicant's petition for reconsideration on June 6, 1988.

On January 1, 1983, subsequent to the *Bekins* decision, specific limitations applicable to request for vocational rehabilitation benefits under §139.5 were codified. Section 139.5 was amended to provide that requests for rehabilitation are governed by §5405.5, 5410, 5803. Section

5410 was amended to add "vocational rehabilitation," in addition to "new and further," as a specific ground for reopening a prior decision, or for initiating an original claim within five years after the date of injury.

The DCA in this case concurred with the Board's determination that §5405.5 was enacted as a statute of limitation for initial or original requests for rehabilitation benefits where *entitlement to* **such has not been previously adjudicated. With the enactment of this section, the Legislature clearly intended to extend the time within which an injured worker may file an initial request for rehabilitation benefits.**

Had applicant's petition to reopen been pending at the time of his request for vocational rehabilitation on October 27, 1986, said the Court, the Bureau as well as the Board would have been vested with jurisdiction to consider his request for rehabilitation. But once the findings and award became final as to the petition to reopen, neither the Board nor the Bureau had jurisdiction to consider a request for rehabilitation made after five years from date of injury.

53 CCC 198
Seeley, Michael vs WCAB **(Court of Appeal, 1st Appellate District, Division Three) – April 8, 1988**

Resumption of services after discontinuation – applicant's request to reopen rehabilitation was untimely when it was filed more than five years after his injury and the Bureau's earlier order did not reserve jurisdiction over any request for further rehabilitation services.

Applicant, Seeley, filed an application for workers' compensation benefits alleging injury to his lower back and lower extremities on July 26, 1980 while employed as a truck driver. On January 13, 1981, he requested vocational rehabilitation benefits and participated in services (evaluation). On November 20, 1984, defendant filed its third request for case closure, stating, as it had in the prior two, that Seeley had declined or refused rehabilitation services. During the interim period, Seeley, who lived in the Ukiah area, had refused to cooperate in the rehabilitation process, having only half-heartedly attempted to explore self-employment opportunities. Subsequently, on December 24, 1984, the

Bureau issued an order stating in part that because Seeley had voluntarily chosen to limit his job search to pursuing self-employment and a job at an auto dealer, further rehabilitation would not be productive unless Seeley came up with on OJT possibility of his own. No further services were ordered. Applicant did not appeal from this decision. In November 1985, the parties settled the case in chieve by C&R.

On March 6, 1986, Seeley filed a request for rehabilitation and on December 12, 1986, the Bureau issued a decision finding that the request was not **barred by the statute of limitations since its order of December 1984 reflected continuing Bureau jurisdiction regarding entitlement. The WCJ denied defendant's appeal from this decision and order. The Appeals Board (Board) granted the defendant's petition for reconsideration and found that Seeley's request to reopen rehabilitation was untimely since it was filed more than five years after his injury. Unlike an initial request that was governed by Labor Code §5405.5, a request to reopen was governed by Labor Code §5803, 5804, and 5410. The Board also found that the Bureau's decision of December 1984 did not reserve jurisdiction over further rehabilitation benefits, stating that an action of this nature was only taken when an applicant's health, physical condition, or some personal problem necessitates it and not when the rehabilitation process fails because of an applicant's lack of cooperation. Writ was denied.**

RU-94 CASE LAW CITATIONS

Kimberly Allen v WCAB (Mammoth Mountain), DCA/Writ denied., 63 CCC 1270, 6/23/98

The Court held that employee was not entitled to an award of vocational rehabilitation services even though she rejected an offer of alternative work that was untimely. The offer was deemed to have conformed to L.C. §4644 (a) (6), though it did not offer 12 months of employment. The offer was for seasonal employment similar to applicant's pre-injury situation.

Rachael A. Babcock v WCAB, DCA/Writ denied, (64 CCC 1254), 10/7/99

Defendant's liability for VR terminated per L.C. §4644 (a) (6) (d), when they offered a job to applicant in her residence at the time of injury and she turned it down.

Bautista v WCAB, DCA/Writ denied, (63 CCC 1060), 1998

Defendants were allowed to present evidence that they fulfilled their Vocational Rehabilitation liability by offering and providing applicant modified work even though the offer was outside the 10 day limit imposed by L.C. §4637. Applicant's acceptance of the job viewed to be a waiver of the right to raise the issue.

Steven Burch v WCAB (UPS), DCA/Writ denied, (63 CCC 606), April 4, 1998

The majority WCAB panel found the defendant's due process rights were violated by ordering them to provide vocational rehabilitation based solely on defendant's failure to produce the RU-94 to verify applicant had been offered modified work, (at Rehabilitation Unit conference, the employee

acknowledged receipt of the document) and by denying defendant to produce other evidence that such work offered.

Brian Charkins v WCAB, DCA/Writ denied, (65 CCC 402), March 9, 2000

Applicant's request for further Vocational Rehabilitation was denied when he failed to accept defendant's offer of alternative work which he believed earnings insufficient under L.C. §4644 (a) (6). Though defendant's failed to provide wages on the offer, they had verbally advised applicant that earning were the same as pre-injury job. Further, the offer of alternative work was not invalidated by defendant's failure to send job description of the alternative job to the treating doctor, since there is no such requirement.

Del Taco v WCAB (Gutierrez), DCA cert./Supreme Court Writ denied, (65 CCC 342), July 12/2000

The Court held that applicant is not entitled to vocational rehabilitation services where he was provided modified work, but later terminated when it was learned that he was an "illegal" alien. This case reinforced the equal protection clause of the constitution and reasoning of the de-certified *Ortega-Ruiz* decision. The Court held that vocational rehabilitation services would have provided an "illegal" worker with more protection than a similar "legal" worker.

Allan Hancock Joint Community College, PSI, W.C. Adm., v WCAB (Anna Moore), (65 CCC 533)

Defendant's liability for VR not terminated when they failed to offer position that paid 85% of pre-injury earnings, lasted only 1 semester (rather than the statutory mandate of 12 months), and did not notify applicant that acceptance of modified position could constitute a waiver of right to VR.

Jennifer Henry v WCAB, DCA Cert. (63 CCC 1481)

Defendant Mammoth Ski Lodge was found to have met it's requirements under L.C. §4644 (a)(6) (b) when it offered to the employee alternative work which equated to 12 months of alternate seasonal work rather than 12 months of continuous work.

Anita Lim v WCAB, DCA/Writ denied, (66 CCC 181), December 28,2000

WCAB found defendants did not delay providing vocational rehabilitation benefits or services to the applicant. Therefore, she was not entitled to benefits under L.C. §4642 or A.R. §10125.1, even though defendant did not give applicant a Notice of Potential Eligibility with information regarding the availability of modified or alternative work.

Hotel Del Coronado, PSI, Wear & Wood, Inc. v WCAB (Managuit), DCA/Writ denied, (63 CCC 1077, 1998

Defendant's vocational rehabilitation liability was not terminated when applicant failed to respond to offer of alternative work within 90 days because there was no medical evidence that the position was within her physical limitations. Later medical evidence showed the job was not physically appropriate.

Shannon Moana v WCAB, DCA/Writ denied, (66 CCC 412), February 15, 2001

WCAB affirmed Rehabilitation Unit determination that defendant's vocational rehabilitation liability was terminated when offer of alternative work complied with L.C. §4644 (a) (6). And even though offer was made 173 days after AME indicated applicant was medically eligible, WCAB found no consequences identified in the statute, regulations or case law for late offer.

Foodmaker, Inc. v WCAB (Margalise Ortega-Ruiz), DCA Cert.(later de-cert.), (63 CCC 1222). October 6, 1998

Court of Appeals held under equal protection clause of U.S. Constitution, WCAB may not treat applicants differently and therefore annulled WCAB order requiring defendants to pay vocational rehabilitation benefits to illegal immigrant applicant which were more costly than would have been required for a legal resident under similar circumstances.

American Modular Systems, Inc., SCIF v WCAB (Simon Perez), DCA/Writ denied, (66 CCC 729), May 24, 2001

WCAB found defendant had violated L.C. §132 (a) when it terminated applicant, who was performing duties of alternative position, but failed to sign RU-94 to officially accept alternative job. Defendant's offer was deemed defective as it had no job description nor was one reviewed by the treating doctor.

Chapter 4.5. Division of Workers' Compensation
Subchapter 1.5. Injuries on or After January 1, 1990
Article 5. Administrative Penalties

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§10111.1. Schedule of Administrative Penalties for Injuries on or After January 1, 1994.

The administrative penalties set forth in subsections (a) through (d) of this section will be imposed for injuries occurring on or after January 1, 1994, subject to any applicable mitigation or exacerbation under subsection (e) of this section. Penalties will not be assessed for violations occurring during the period January 1, 1994 through March 31, 1994 for acts or omissions for which there previously existed no audit penalties.

(a) The following Group A violations carry penalties of up to $100:

(1) The penalty for each failure to pay the 10% self-imposed increase with a late indemnity payment in accordance with Labor Code Section 4650(d) is:

$25 if the self-imposed increase was paid after the late indemnity payment;

If the self-imposed increase was not paid or was only partially paid, the audit penalty is based on the amount of the underlying indemnity and is as follows:

$25 if the late-paid indemnity totals not more than 3 days;

$50 if the late-paid indemnity totals more than 3 but not more than 7 days;

$75 if the late-paid indemnity totals more than 7 but not more than 14 days;

$100 if the late paid indemnity totals more than 14 days.

(2) The penalty for each failure to make the first payment of permanent disability indemnity within 14 days after the last payment of temporary disability indemnity, or within 14 days of knowledge of the existence of permanent disability when there is no temporary disability, is:

$25 if the first payment was made 1 to 2 days late;

$50 if the first payment was made 3 to 7 days late;

$75 if the first payment was made 8 to 14 days late;

$100 if the first payment was made more than 14 days late;

(3) The penalty for each failure to object or pay to the injured worker, within 60 days of receiving a request, reimbursement for the reasonable expense incurred for self-procured medical treatment in accordance with Labor Code Section 4600, is:

$25 for $100 or less in expense;

$50 for more than $100, to $200, in expense;

$75 for more than $200, to $400, in expense;

$100 for more than $400 in expense.

(4) The penalty for each failure to pay mileage fees and bridge tolls when notifying the employee of a medical evaluation scheduled by the claims administrator, in accordance with Labor Code Sections 4600 through 4621; or to pay mileage fees and bridge tolls within 14 days of receiving notice of a medical evaluation scheduled by the administrative director or the appeals board; or to object or pay the injured worker for any other transportation, temporary disability, meal or lodging expense incurred to obtain medical treatment or evaluation, within 60 days of receiving a request, is:

$25 for $10 or less in expense;
$50 for more than $10, to $50, in expense;
$75 for more than $50, to $100, in expense;
$100 for more than $100 in expense.
(5) The penalty for each failure to document a factual basis for paying less than the maximum indemnity rate is $100.
(6) The penalty for each failure to make temporary disability, permanent disability, death benefits or VRMA payments according to the payment schedule defined by Section 10100.1(x) of these regulations is:
$25 for each payment made 1 to 2 days late;
$50 for each payment made 3 to 7 days late;
$75 for each payment made 8 to 14 days late;
$100 for each payment made more than 14 days late.
(7) The penalty for each failure to comply with any regulation of the Administrative Director specified in this subsection is:
[i] For each failure to include in a claim file a copy of the Employee's Claim for Worker's Compensation Benefits, DWC Form 1, showing the date the form was provided to and received from the employee, or documentation of the date the claim form was provided to the employee if the employee did not return the form, the penalty is:
$100 if there was any late indemnity payments, or if notice of acceptance of the claim was not issued within 90 days after the employer's date of knowledge of injury and disability, or if the claim was denied.
[ii] For each failure to issue a notice of benefits as required by Title 8, California Code of Regulations, Division 4.5, Chapter 1, Article 8, beginning with Section 9810, or by Title 8, California Code of Regulations, Division 4.5, Chapter 1.5, Article 7, beginning with Section 10122, unless penalties apply and are assessed under Section 10111.1(b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) or (b)(8) of these Rules, the penalty is $100.
[iii] For each Notice of Benefits which was not issued timely as provided in Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, or as provided in Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Section 10122, unless penalties apply and are assessed under Section 10111.1(b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) or (b)(8) of these regulations, the penalty is:
$25 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA which was issued from 1 to 7 days late;
$50 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA which was issued more than 7 days late, and for each delay in decision notice which was issued from 1 to 7 days late;
$75 for each delay in decision notice which was issued more than 7 days late.
[iv] For each notice of benefits required by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, (except a materially misleading denial notice assessed under Section 10111.1(b)(9)), or by Title 8, California Code of Regulations,

Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Section 10122, which is materially inaccurate or incomplete, the penalty is $25.
[v] For each failure to include in a claim file, or document attempts to obtain, any of the required contents specified in Section 10101.1(b), (c), (d), (e), (f), (g), (h), (i), (j) of these Regulations, the penalty is $100.
[vi] For each failure to comply with any regulation of the Administrative Director, not otherwise assessed in this Subchapter, the penalty is $100.
(8) The penalty for each failure to pay or object to a billing for a medical-legal expense, in the manner required by Section 9794, within 60 days of receiving the bill and all reports and documents required by the Administrative Director incident to the services, is:
$25 for each bill which was paid more than 60 days from receipt with interest and a 10% increase;
$50 for each bill which was paid more than 60 days from receipt where either interest or a 10% increase was not included;
$100 for each bill which was paid more than 60 days from receipt where neither interest nor a 10% increase was paid.
$75 for each bill which was not paid at the time the audit subject was notified the claim was selected for audit where no timely objection was sent.
(9) The penalty for each failure to pay or object to, within 60 days of receipt, in the manner required by law or regulation, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill remains unpaid at the time the audit subject is notified that the claim was selected for audit. For the purpose of this penalty the treating physician will be presumed chosen by the employee unless the claims administrator demonstrates otherwise:
$25 for each bill of $100 or less, excluding interest and penalty;
$50 for each bill of more than $100, but no more than $200 excluding interest and penalty;
$75 for each bill of more than $200, but no more than $300, excluding interest and penalty;
$100 for each bill of more than $300, excluding interest and penalty.
(10)) The penalty for each failure to pay or object to, within 60 days of receipt, in the manner required by law or regulation, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill was paid before the audit subject was notified that the claim was selected for audit:
$25 for each bill which included a 10% increase and interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2; $50 for each bill which included either a 10% increase or interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2; $75 for any bill which included neither a 10% increase nor interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2.
(11) The penalty for each failure to pay or object to a vocational rehabilitation bill within 60 days of receipt, as required by Title 8, California Code of Regulations, Sections 10132 and 10132.1, is:
$25 for each bill of $100 or less;
$50 for each bill of more than $100, but no more than $200;
$75 for each bill of more than $200, but no more than $300;
$100 for each bill of more than $300.

(12) The penalty for each failure to make a required first payment of temporary disability indemnity within 14 days after the employer's date of knowledge of injury and disability is:
$25 if the first payment was made 1 to 7 days late;
$50 if the first payment was made 8 to 14 days late;
$75 if the first payment was made 15 to 21 days late;
$100 if the first payment was made more than 21 days late.
(13) The penalty for each underpayment of an indemnity payment (including death benefits and VRMA), when the balance of the indemnity was paid late, is:
$25 for late payment of the equivalent of 3 days of indemnity or less;
$50 for late payment of the equivalent of more than 3 but no more than 7 days of indemnity;
$75 for late payment of the equivalent of more than 7 but no more than 14 days of indemnity;
$100 for the late payment of the equivalent of more than 14 days of indemnity.
(14) The penalty for each failure to make a first payment of VRMA or death benefit when due is:
$25 if the first payment was made 1 to 7 days late;
$50 if the first payment was made 8 to 14 days late;
$75 if the first payment was made 15 to 21 days late;
$100 if the first payment was made more than 21 days late.
(b) The following Group B violations carry penalties of up to $500:
(1) The penalty for each failure to maintain or provide to the Audit Unit a claim log which complies with these Regulations is:
$25 for each failure to list on a claim log one or more of the following: employee's name; claim number; date of injury;
$25 for each misdesignation of an indemnity file as a medical-only file on the claim log;
$100 for each failure to identify self-insured employers on the log as required by Section 10103.1(b)(6) of these Regulations;
$100 for each failure to identify the underwriting insurance company of an insurance group;
$100 for each failure to designate a denied claim on the log;
$100 for each claim not listed on the log;
$250 for each failure to provide the claim log to the Audit Unit within 14 days of receipt of a written request if the claim log was provided more than 14 but no more than 30 days from receipt of the request;
$500 for each failure for more than 30 days from receipt of a written request, to provide the claim log to the Audit Unit.
(2) The penalty for each failure to provide information regarding the Americans with Disabilities Act, the Fair Employment and Housing Act, and workers' compensation vocational rehabilitation as required by Labor Code Section 4636(a) immediately after 90 days of aggregate temporary disability indemnity is $100 if the information was provided or the employee returned to his or her usual and customary occupation more than 10 but not more than 20 days after 90 days of aggregate total disability, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(3) The penalty for each failure to issue notice of medical eligibility for vocational rehabilitation services (if not previously issued) within 10 days after knowledge of a physician's opinion that the employee is medically eligible, or for failure to issue notice within 10 days after 366 days of aggregate total temporary disability, is $100 if the notice was issued not more than 10 days late, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. Where the injured worker is represented by an attorney and documentation in the claim file indicates that the injured worker's attorney has received a copy of the physician's report indicating the employee is medically eligible for vocational rehabilitation, and if the knowledge is of a physician's opinion other than the injured worker's treating physician, a physician selected from a panel provided by the Industrial Medical Council, or an agreed medical examiner, the penalty shall be assessed at 20% of the amount otherwise assessed under this subsection and shall not exceed $100.

(4) The penalty for each failure to provide the employee with a copy of the treating physician's final report together with notice of the procedure to contest the treating physician's determination, in accordance with Labor Code Section 4636(d), immediately upon receipt of that report, is $100 for compliance more than 10 but not more than 20 days after receipt of the treating physician's final report, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(5) The penalty for each failure to notify an injured employee of the reasons he or she is not entitled to any, or to any further, vocational rehabilitation services, and the procedure for contesting the determination of non-eligibility, as required by Sections 9813(a)(3) and 10131, is $100 if notification was issued more than 10 but not more than 20 days after the determination, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $40 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(6) The penalty for each failure to notify an injured employee that his or her injury may have caused permanent disability and the procedures for evaluating the permanent disability, or of the employer's position that the injury has caused no permanent disability and the employee's remedies, in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810; is $100 if the notice was issued up to 10 days late, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(7) The penalty for each failure to notify a claimant of the denial of all death benefits claimed by that person (except a denial limited to all or any of: burial expense, benefits which were due to the injured worker before his or her death, or medical-legal expense), in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with

Section 9810, is $100 if the notice was issued up to 10 days late, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
(8) The penalty for each failure to send a notice denying liability for all workers' compensation benefits, in accordance with Title 8, California Code of Regulations, Division 4.5, Chapter 1, Article 8, beginning with Section 9810, is $100 if the notice was issued up to 10 days late, and an additional $100 for each additional delay of not more than 10 days, to a maximum penalty of $400 if the notice was issued more than 30 days late, and $500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
(9) The penalty for each notice denying lability for all workers' compensation benefits, which was materially misleading, is $500. The penalty for each materially incomplete denial notice is $100.
(10) The penalty for each failure to pay any uncontested penalty assessment in a Notice of Penalty Assessments within 15 days of receipt of the Notice of Penalty Assessments is:
$100 for each assessment paid more than 15 but not more than 30 days after receipt;
$300 for each assessment paid more than 30 but not more than 45 days after receipt;
$500 for each assessment not paid within 45 days after receipt.
(11) The penalty for each failure to comply with Section 10104 of this Subchapter is:
$100 for each period of 1 to 14 days' delay in filing the Annual Report of Inventory, to a maximum penalty of $500 for each Annual Report of Inventory;
$500 for each Annual Report of Inventory that overstates or understates the number of claims by 10% or more.
(c) The following Group C violations carry penalties of up to $1,000:
(1) The penalty for each failure to pay compensation as ordered in a Notice of Compensation Due within 15 days of receipt, if no timely Request for Review of Notice of Compensation Due was filed, is:
$250 if the compensation was paid more than 15 but not more than 30 days from receipt of notice;
$500 if the compensation was paid more than 30 but not more than 45 days from receipt of notice;
$1,000 for failure to pay the compensation within 45 days of receipt of notice.
(2) The penalty for each termination, interruption or deferral of vocational rehabilitation services other than as provided by Labor Code Sections 4637(b), 4644(b) is $1,000.
(3) The penalty for each failure to pay or denial of rehabilitation maintenance allowance, temporary disability indemnity, or salary continuation in lieu of temporary disability indemnity, without a factual, medical or legal basis for the failure or denial, is:
$100 for the equivalent of 3 days or less of unpaid indemnity;
$200 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity;
$300 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity;
$500 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity;
$750 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity;
$1,000 for the equivalent of more than 28 days of unpaid indemnity.

(4) The penalty for each failure to pay permanent disability indemnity based on a reasonable estimate of permanent disability, or denial of permanent disability indemnity, without a factual, medical or legal basis, is:
$200 for up to 6 weeks of unpaid indemnity;
$400 for more than 6 but not more than 15 weeks of unpaid indemnity;
$750 for more than 15 but not more than 30 weeks of unpaid indemnity;
$1,000 for more than 30 weeks of unpaid indemnity.
(5) The penalty for each failure to pay or denial of death benefits to any claimant without a factual, medical or legal basis for the failure or denial, is:
$100 for the equivalent of 3 days or less of unpaid indemnity under Labor Code §4701(b), or for up to $300 of unpaid burial expenses;
$200 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity under Labor Code §4701(b), or for more than $300, up to $600, of unpaid burial expenses;
$300 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity under Labor Code §4701(b), or for more than $600, up to $900, of unpaid burial expenses;
$500 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity under Labor Code §4701(b), or for more than $900, up to $1,500, of unpaid burial expenses;
$750 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity under Labor Code §4701(b), or for more than $1,500, up to $2,250, of unpaid burial expenses;
$1,000 for the equivalent of more than 28 days of unpaid indemnity under Labor Code §4701(b), or for more than $2,250 of unpaid burial expenses.
The penalty for each failure to pay or denial of payment to any claimant of compensation which was accrued and unpaid to the injured worker at the time of the worker's death is the same penalty which would apply for failure to pay or denial of payment of that compensation to the injured worker.
The penalty under this subsection does not supersede the penalty under subsection 10111.1(d)(1).
(6) The penalty for each failure to investigate a claim as provided by Section 10109 of these Regulations is:
$250 if the failure to investigate involved a claim for medical treatment only, with no reasonable expectation of liability for indemnity payments;
$500 if the failure to investigate involved a claim or reasonable expectation of liability for temporary or permanent disability indemnity or vocational rehabilitation benefits;
$1,000 if the failure to investigate involved a claim or reasonable expectation of liability for death benefits, or a combination of two or more of the following classes of benefits temporary or permanent disability indemnity or vocational rehabilitation.
This penalty does not supersede a penalty for denial of claim without an investigation and documentation supporting a factual, medical, or legal basis for denial as set forth in Section 10111.1(d)(1) of this subchapter.
(d) The following Group D violations carry penalties of up to $5,000:
(1) The penalty for each denial of all liability for a claim without documentation supporting a factual, medical, or legal basis for the denial is specified in this subsection.

In order to avoid a penalty, the denial must state a legal, factual or medical basis recognized by applicable law and documented by information in the claim file. An employee's purported waiver of benefits in a compensable case is not a ground to deny liability.
The gravity portion of the penalty is based on the class or classes of benefits potentially payable if benefits were provided. The total penalty shall be determined by the applying the penalty assessment amount listed in [i] for gravity, subtracting the amount listed in [ii] for good faith if applicable, and increasing or decreasing the penalty as applicable for history and frequency as set forth in [iii] and [iv]:
[i] For a claim involving potential for medical treatment only the penalty is $3,500;
For a claim involving potential for medical treatment and either temporary or permanent disability the penalty is $4,000;
For a claim involving potential for medical treatment and both temporary and permanent disability the penalty is $4,500;
For a claim involving potential for medical treatment, temporary disability, permanent disability and vocational rehabilitation the penalty is $5,000;
For a claim involving potential for death benefits the penalty is $5,000.
[ii] The penalty will be reduced by $1,000 for good faith if there was a reasonable attempt to investigate the claim.
[iii] Reduction or increase of the penalty for history shall be based on the following:
An audit subject having no prior Audit Unit history will receive a $500 reduction;
An audit subject having a prior Audit Unit history of no more than one audited unsupported denial will receive a $500 reduction;
An audit subject having a prior Audit Unit history of more than one audited unsupported denial but no more than 5% of audited denials as unsupported will receive no reduction or increase for history;
An audit subject having a prior Audit Unit history of more than one audited unsupported denial and more than 5% of audited denials as unsupported will receive a $500 increase.
[iv] Reduction of the penalty for frequency shall be based on the following:
An audit subject having no more than one audited unsupported denial will receive a $500 reduction;
An audit subject having more than one audited unsupported denial but no more than 5% of audited denials which are unsupported will receive no reduction or increase for frequency;
An audit subject having more than one audited denial and more than 5% of audited denials which are unsupported will receive an increase of $500.
[v] The total amount assessed for a denial shall be reduced by 50% if the claim was accepted after the denial without evidence that the acceptance was the result of litigation or of the claim's selection for audit.
(2) The penalty for each failure to comply with, show good cause for non-compliance with, or contest, within 30 days of receipt, any written request or order of the Administrative Director or Audit Unit which is not specified in subsections (b)(1), (c)(1), or (d)(5) of this section is:
$500 if there was compliance in more than 30 but not more than 40 days from receipt of the request or order;
$1,000 if there was compliance in more than 40 but not more than 60 days from receipt of the request or order;

$2,500 if there was compliance in more than 60 but not more than 90 days of receipt of the request or order;
$5,000 for failure to comply within 90 days of receipt of the request or order.
(3) The penalty for each failure by a claims administrator to provide a claim form within one working day of receipt of a request from an injured worker or the worker's agent is:
$500 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were being provided to the employee at the time of the request;
$1,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were being provided to the employee at the time of the request;
$3,000 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were not being provided to the employee at the time of the request;
$5,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were not being provided to the employee at the time of the request.
(4) The penalty for each failure to comply in full with any final award or order of the Workers' Compensation Appeals Board or the Rehabilitation Unit within 20 days of service, allowing an additional five days for service by mail, is:
For any failure to pay all amounts payable as awarded or ordered, including interest, when partial nonpayment is due to a miscalculation or oversight and all other amounts have been paid, the penalty amount shall be determined based on the equivalent amount of unpaid indemnity as assessed under subsection (c)(3) of this section.For late payment of an award or order, the penalty is:
$500 for compliance in more than 20 but not more than 35 days from the date of service
$1,000 for compliance (other than a late interest payment) in more than 35 but not more than 60 days from the date of service;
$2,500 for compliance (other than a late interest payment) in more than 60 but not more than 90 days from the date of service;
$5,000 if there was not compliance (other than failure to pay interest) within 90 days of the date of service.Penalties will be assessed separately for both late payment and the failure to pay a portion of an award or order.
(5) The penalty for each failure to produce a legible paper copy of a claim file as required by Section 10107 or at the time specified by the Administrative Director is:
$100 if the file was produced not more than 3 days late;
$250 if the file was produced more than 3 but not more than 14 days late;
$500 if the file was produced more than 14 but not more than 29 days late;
$1,000 if the file was produced more than 29 days late but not more than 40 days late;
$2,500 if the file was produced more than 40 days late but not more than 90 days late;
$5000 if the was produced more than 90 days late or was not produced.
(6) The penalty for providing a backdated or otherwise altered or fraudulent document to the Audit Unit, or intentionally withholding a document from the Audit Unit, which would have the effect of avoiding liability for the payment of compensation or an audit penalty is: $5,000 for each backdated, altered, or withheld document. The amount of the penalty is not subject to reduction based on frequency, history, or good faith as set forth in subsection (e) of this section. The claims

administrator shall not be subjected to penalty under this subsection if it demonstrates by clear and convincing evidence that the backdating, alteration, or withholding of the document was due solely to unintentional clerical error.
(e) The penalties otherwise applicable under subsections (a) through (d) of this section shall be modified by any applicable provision of this subsection (e). However, the method of modifying penalties for unsupported denials is set forth in Section 10111(d)(2) and Section 10111.1(d)(1) and is not governed by this subsection (e).
(1) Modification for the gravity of each violation is included within the penalty assessment amounts listed in subsections (a) through (d);
(2) Modification for the good faith of the audit subject shall be determined based on documentation of attempts to comply with requirements of the Labor Code and the Administrative Director's regulations, and may result in a reduction of 20% for each applicable violation.
(3) Modification for frequency shall be considered for each type of violation. Frequency shall be determined by comparing the number of audited files which were randomly selected pursuant to Section 10107(c) and (d) of these regulations in which there is an assessment for a specific type of violation to the total number of those randomly selected audited files in which the possibility of that type of violation exists. The frequency of violations in the complaint files selected for audit pursuant to Section 10107(e) shall not be used to determine penalty amounts for these categories, except the mitigation or exacerbation of penalty amounts based on frequency of violations in the randomly selected files shall be applied to the audited complaint files.
[i] If there are assessments for late first payments of temporary disability indemnity in 10% or less of the audited files in which payments of temporary disability indemnity are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of temporary disability indemnity in more than 30% of the audited files in which payments of temporary disability indemnity are made, the penalty amounts of these assessments will be increased by 20%,
[ii] If there are assessments for late first payments of permanent disability indemnity in 10% or less of the audited files in which payments of permanent disability indemnity are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of permanent disability indemnity in more than 30% of the audited files in which payments of permanent disability indemnity are made, the penalty amounts of these assessments will be increased by 20%.
[iii] If there are assessments for late first payments of vocational rehabilitation maintenance allowance in 10% or less of the audited files in which payments of maintenance allowance in 10% or less of the audited files in which payments of maintenance allowance are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of vocational rehabilitation maintenance allowance in more than 30% of the audited files in which payments of maintenance allowance are made, the penalty amounts of these assessments will be increased by 20%.
[iv] If there are assessments involving late subsequent payments, including any payment in which all indemnity then due is not paid with that payment but is paid with a subsequent payment as assessed under subsection (a)(13) of this section, of temporary disability indemnity, permanent

disability indemnity, or vocational rehabilitation maintenance allowance in 10% or less of the audited files in which these subsequent payments were made, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late subsequent payments of temporary disability indemnity, permanent disability indemnity, or vocational rehabilitation maintenance allowance exceeds 30% of the total number of audited files with subsequent payments of these benefits, the penalty amounts of these assessments will be increased by 20%.

[v] If there are assessments involving late payments of death benefits in 10% or less of the audited files in which these payments were made, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late payments of death benefits exceeds 30% of the total number of audited files with payments of death benefits, the penalty amounts of these assessments will be increased by 20%.

[vi] If there are assessments involving failure to issue benefit notices (other than notices specifically mentioned elsewhere in this subsection (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. If the number of audited files with assessments for failure to issue these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.

[vii] If there are assessments involving late provision of benefit notices (other than notices specifically mentioned elsewhere in this subsection (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. If the number of audited files with assessments for late issuance of these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late issuance of these notices exceeds 30% of the total number of audited files in which these notices were required and issued, the penalty amounts of these assessments will be increased by 20%.

[viii] If there are assessments involving the failure to pay or object to medical expenses within 60 days of receipt of the billing in 10% or less of the audited files with a requirement to pay or object to medical bills within 60 days of receipt of billing, the penalty amounts of these assessments will be reduced by 20%. if the number of audited files with assessments for failure to pay or object to medical expenses within 60 days of receipt of the billing exceeds 30% of the total number of audited files in which there was a requirement to pay or object to medical bills within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.

[ix] If there are assessments involving the failure to pay or object to medical-legal expenses within 60 days of receipt of the billing in 10% or less of the audited files containing medical-legal expenses, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to pay or object to medical-legal expenses within 60 days of receipt of the billing exceeds 30% of the total number of audited files in which there was a requirement to pay or object to medical-legal expenses within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.

[x] If there are assessments involving the failure to pay or object to vocational rehabilitation expenses within 60 days of receipt of the billing in 10% or less of the audited files containing vocational rehabilitation expenses, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to pay or object to vocational rehabilitation expenses within 60 days of receipt of the billing exceeds 30% of the total number of audited files in which there was a requirement to pay or object to vocational rehabilitation expenses within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.

[xi] For injuries before January 1, 1994, if there are assessments involving the failure to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability in 10% or less of the audited files with 90 or more days of aggregate total disability, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments involving the failure to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability exceeds 30% of the total number of audited files in which there was a requirement to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability, the penalty amounts of these assessments will be increased by 20%.

[xii] For injuries on or after January 1, 1994, if there are assessments involving the failure to provide information to the employee required by Labor Code Section 4636(a) within 10 days after 90 days of aggregate total disability in 10% or less of the audited files with 90 or more days of aggregate total disability, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments involving the failure to provide the information specified in Section 4636(a) within 10 days after 90 days of aggregate total disability exceeds 30% of the total number of audited files in which there was a requirement to provide the information specified in Section 4636(a) within 10 days after 90 days of aggregate total disability, the penalty amounts of these assessments will be increased by 20%.

[xiii] If there are assessments involving the failure to notify an employee in a timely manner of potential eligibility for vocational rehabilitation in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments involving the failure to notify an employee in a timely manner of potential eligibility for vocational rehabilitation exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.

[xiv] If there are assessments involving the failure to notify an employee in a timely manner of non-eligibility for vocational rehabilitation in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced 20%. If the number of audited files with assessments involving the failure to notify an employee in a timely manner of non-eligibility for vocational rehabilitation exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.

[xv] If there are assessments involving the failure to notify an employee in a timely manner of the procedure for evaluating the employee's permanent disability, as required by Title 8, California Code of Regulations, Sections 9812(f)(2), 9812(f)(4), (g)(2), (g)(3), in 10% or less of the audited

files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of audited audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
[xvi] If there are assessments involving the failure to notify an employee or claimant in a timely manner of the denial of all liability for a claim, or of all liability for death benefits, in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
[xvii] If there is an assessment for the failure to timely respond to a request to provide or authorize medical treatment in no more than one audited file, the penalty amount of that assessment will be reduced by 20%. If the number of audited files with assessments for the failure to timely respond to a request to provide or authorize medical treatment, the penalty amounts for these assessments will be increased by 20%.
[xviii] If there are assessments involving the failure to pay temporary disability indemnity, permanent disability indemnity, death benefits, vocational rehabilitation maintenance allowance, self-imposed increase for late indemnity payment, interest, or penalty in 5% or less of the audited files in which any of these forms of compensation are accrued and payable, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for the failure to pay any of these forms of compensation is more than 20% of the audited files in which any of these forms of compensation is accrued and payable, the penalty amounts of these assessments will be increased by 20%.
[xix] If there are assessments for failure to include items or properly designate entries on a claim log, and if no more than ten, or no more than 1%, of the entries on the log are affected, whichever is smaller, the penalty amounts of these assessments will be reduced by 20%. If more than fifty, or more than 5% of the entries on the log are affected, whichever is smaller, the penalty amounts of these assessments will be increased by 20%.
[xx] If there are other violations assessed which are not specified in [i] through [xix] above in 5% or less of the audited files, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments exceeds 20% of the audited files, the penalty amounts of these assessments will be increased by 20%.
(4) Modification of the history of previous violations, if any, shall be based on prior audits of the audit subject at the current adjusting location. However, no modification for history shall apply if a valid comparison cannot be made between the current and prior audit(s). The penalty shall be modified for history as follows:
[i] There will be a reduction of 20% of any penalty for which there was no increase in the penalty amount based on frequency as described in subsections (e)(3)[i] through (3)[xx] above in the previous audit, and for which there was a reduction in the penalty amount based on frequency in the present audit at the audited adjusting location.
[ii] There will be an increase of 20% of any penalty for which there was an increase in the penalty amount based on frequency as described in subsections (3)[i] through (3)[xx] above in the previous

audit, and for which there was no decrease in the penalty amount based on frequency of violations in the present audit at the audited adjusting location, provided that any increased penalty is limited to the maximum provided by statute and regulation for the violation.
(5) No administrative penalties shall be assessed if the only violations found in an audit are violations which do not involve the denial of a claim without supporting documentation, or failure to pay or late payment of compensation, and the violations are found in 20% or less of the indemnity files audited.
(6) Penalties may be mitigated outside the above mitigation guidelines in extraordinary circumstances, when strict application of the mitigation guidelines would be clearly inequitable.
NOTE: Authority cited: Sections 59, 129.5, 133, 138.3, 138.4, 139.5, 4603.5, 4627 and 5307.3, Labor Code. Reference: Sections 124, 129, 129.5, 4061, 4453, 4454, 4550, 4600, 4603.2, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4651, 4701 through 4703.5, 4706, 4706.5, 5401, 5401.6, 5402, 5800 and 5814, Labor Code; and Section 2629.1(e), (f), Unemployment Insurance Code.
HISTORY
1. New section filed 1-28-94; operative 1-28-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 94, No. 4).
2. Editorial correction inserting omitted text in subsection (e)(3)[xviii] (Register 95, No. 32).
3. Amendment of subsections (a)(7)[ii]-(a)(7)[iv], (b)(1), (b)(9), (d)(1) and (e)(3)[xv] filed 2-14-96; operative 2-14-96. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 96, No. 7).

4. Amendment filed 10-26-98; operative 11-25-98 (Register 98, No. 44).

LEXSEE 65 Cal. Comp. Case 177

CALIFORNIA COMPENSATION CASES

Delta Airlines, Employers Self Insurance Service, Petitioners vs. Workers Compensation Appeals Board, Patricia Fox, Respondents

Civil No. D034516--

Court of Appeal, Fourth Appellate District, Division One

65 Cal. Comp. Cas 177; 2000 Cal. Wrk. Comp. LEXIS 6159

January 25, 2000

PRIOR HISTORY: **[**1]** Prior History: W.C.A.B. No. SDO 200871--WCJ William Ordas SDO WCAB Panel: Commissioners Casey, Ruggles, Burton

DISPOSITION: Disposition: Petition for writ of review denied

HEADNOTE: Vocational Rehabilitation--Modified or Alternative Work--Notice--WCAB determined that vocational rehabilitation benefits provided to applicant were void because defendant did not provide applicant with notice, as required under Labor Code § 4636(d)(1)[Deering's], of whether it would offer modified or alternative work.[See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 25.20[5], 35.31[1][a],[c].]
Penalty--Unreasonably Delay of Payment--WCAB imposed 10 percent penalty pursuant to Labor Code § 5814[Deering's] for defendant's improper, unilateral deduction of credit for permanent disability advances from monies due to applicant under stipulated award.[See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 10.40[3], 27.12[2][c].]

Applicant sustained two industrial injuries to her low back, right shoulder, and neck on 7/17/93 and on 2/14/95, while employed as a senior customer agent for Defendant Delta Airlines. Applicant was ultimately found to be a QIW.

On 6/13/97, Applicant requested VR services **[**2]** and began a VR program, which was completed on 12/28/97. Following completion of the VR program, Applicant requested modified or alternative employment with the same employer because she desired to retain higher wages and

benefits. Defendant alleged that it sent a letter to Applicant on 6/26/97, indicating that it would not provide modified work to Applicant. Applicant denied receiving the letter.

On 3/9/98, Defendant requested VR closure. Applicant objected, and the matter proceeded to a RU conference.

On 6/2/98, the RU issued a Determination finding that Defendant had delayed providing notice that it would not offer modified work. Based on this delay, the RU determined that VR benefits paid from 6/13/97, the date Applicant requested benefits, through 6/27/97, the date of notification of modified work, would not count **[*178]**

towards the mandatory cap on VR benefits. The Determination further stated that a second formal conference would be scheduled to address the issue of Applicant's request for a second VR plan.

On 6/30/98, Applicant filed an appeal from the Determination of the RU, contending that Defendant failed to give her timely or proper notice of the availability **[**3]** of modified or alternative employment. Attached to Applicant's appeal was copy of a facsimile transmission sheet, containing comments by Defendant's attorney. The comments stated in relevant part: "The purpose of sending you this form letter was to show that an attempt was made to verify whether modified/alternative [work] was going to be offered by your employer. There was no response from Delta, as you know."

During the hearing on Applicant's appeal, the parties entered into stipulations in which Defendant agreed to pay Applicant $1,950 to resolve the VR issues regarding: (1) specific claims of VRMA, potentially payable at the TD rate from 5/9/97 until 6/12/97 and (2) any claims of penalty for unreasonable failure to provide VR benefits before 6/13/97. Applicant stipulated to resolve issues regarding whether there was lack of proper notification of the existence of modified or alternative work with Defendant prior to 6/13/97. The parties further stipulated that they would return the issue of Applicant's entitlement to VR benefits on or after 6/13/97 to the RU for resolution.

The WCJ approved the stipulations and a Stipulated Award was issued. The Stipulated Award contained **[**4]** no provisions regarding Defendant's right to credit for PD advances. Based on the stipulations, the WCJ referred the matter back to the RU for further determination of Applicant's entitlement to VR benefits on or after 6/13/97.

On 10/7/98, Defendant issued a check for $1,170 to Applicant as payment of the Stipulated Award. The check contained the notation "comp pay from 5/9/97 to 6/12/97."

On 10/15/98, Applicant notified the WCAB and Defendant that she was underpaid. The matter was set for hearing on 11/20/98.

On 11/6/98, Defendant wrote a letter to the WCAB seeking a continuance and stating that it had deducted PD advances paid during the period of 5/8/97 to 6/12/97, for a total deduction of $812.52. Defendant further noted that it had overpaid Applicant by $32.52 in the 10/7/98 check.

The matter proceeded to another VR conference regarding whether Applicant was entitled to further VR. On 12/1/98, the RU issued a Determination, which denied Applicant's request for a second VR plan. Applicant appealed this Determination, contending that the RU misinterpreted or disregarded Labor Code § § 4636[Deering's] and 4638[Deering's].

On 6/24/99, the WCJ issued an F&A, in which he **[**5]** found that: (1) prior to the commencement of VR, Defendant failed to provide Applicant with notice of **[*179]**

whether it would or would not be able to offer modified or alternative work (2) the 12/1/98 Determination of the RU was not supported by substantial evidence or the law, and should be set aside as void and (3) Defendant unreasonably delayed payment of the Stipulated Award and was liable for a penalty under Labor Code § 5814[Deering's].

Defendant sought reconsideration, contending that: (1) it was denied due process of law when the WCJ issued a finding of fact on the issue of timely or proper notice of modified or alternate employment, which was previously settled by the parties (2) the WCJ erred in his failure to limit his finding to the issue presented before the RU conference, which was whether Applicant was entitled to a second VR plan (3) the WCJ erred in finding the 12/1/98 Determination of the RU was not supported by substantial evidence and (4) Defendant's delay in payment of the Stipulated Award was due to inadvertence and misunderstanding by Defendant's attorney as to the terms of the award, and Defendant was not provided with a specific date by which the Award **[**6]** should have been paid.

The WCAB granted reconsideration and, in a majority panel decision, affirmed the WCJ's findings. With regard to the penalty issue, the WCAB noted that Defendant presented no evidence that it had a good faith doubt as to its liability for the entire amount of the settlement award. The WCAB further pointed out that Defendant acted improperly in taking a unilateral credit for PD advances out of the monies owed under the settlement. The WCAB was not persuaded that Defendant misinterpreted the terms of the Stipulated Award, nor was the WCAB persuaded that Defendant was deprived of due process because there was no specific date of payment stated in the Stipulated Award. The WCAB commented that Defendant's attorney was present when the stipulations were entered and could have requested a specific date for payment but did not do so. Moreover, according to the WCAB, Defendant's 45-day delay in making payment in full was not a reasonable time within which to make payment. The WCAB found that Defendant's imposition of a penalty was justified under these circumstances.

Addressing the VR issues, the WCAB explained that employers have an affirmative duty to respond **[**7]** regarding the availability of modified or alternative work under Labor Code § 4636(d)(1)[Deering's] and 8 Cal. Code Reg. § 9813(d)(2)(F). The WCAB noted as follows:

The defendant contends that it did send a letter to the applicant indicating that the employer has no modified or alternative work. The defendant argues that it sent a letter to the applicant on June 26, 1997. As noted by the WCJ in his Report, the applicant testified credibly at trial that she never received the June 26, 1997 letter. Further, we observe that the copy of the defendant's June 26, 1997 letter contained in the Board's file is unsigned. The WCJ also notes in his Report that the defendant chose not to introduce any evidence to contradict the applicant's testimony that she never

received the June 26, 1997 letter. We observe that the defendant introduced no evidence at trial as to when the June 26, 1997 letter was **[*180]**

purportedly sent to the applicant. We also observe that the defendant's statement contained in the June 26, 1997 letter that "... it appears your employer DELTA AIR LINES, INC., does not have a modified/alternative position available for you ..." is inaccurate or a mischaracterization **[**8]** in that the defendants's May 19, 1998 facsimile to the applicant reflects that there was never any response by Delta Air Lines to the inquiry regarding the availability of modified or alternative employment.

The WCAB disagreed with Defendant's contention that the issue of notice regarding modified or alternative employment was resolved by the parties' 9/29/98 stipulation. It pointed out that the stipulation expressly only resolved the issue of whether there was proper notification before 6/13/97 regarding the availability of modified or alternative work, but did not resolve any issues of proper notice after that date.

Finally, the WCAB stated that it disagreed with Defendant's contention that the WCJ erred in failing to limit his decision to the sole issue of whether Applicant was entitled to a second VR plan. The WCAB pointed out that a timely appeal from a decision of the RU confers jurisdiction on the WCJ to whom the case is assigned to decide all issues, even those VR issues not brought initially before the RU for determination.

Commissioner Ruggles dissented from the majority panel's decision regarding the penalty issue. In his opinion, Defendant's attorney mistakenly believed **[**9]** that the stipulations included a provision for credit for PD advances, which is typically included in settlements between the parties. Commissioner Ruggles observed that the original amount of the settlement was $2,365. From this sum, the parties agreed to a deduction of $715 for PD advances and an addition of $300 as a stipulated penalty to be paid by Defendant, leaving a settlement sum of $1,950. The Commissioner believed that Defendant had inadvertently forgotten that the PD advances were already deducted from the settlement amount and, under the facts of this case, had corrected the error in a reasonable time.

Defendant filed a Petition for Writ of Review, contending in relevant part that the WCAB erred in determining the VR benefits it provided Applicant were void because Defendant did not provide Applicant with notice pursuant to Labor Code § 4636(d)(1)[Deering's] of whether it would or would not offer modified or alternative work. Defendant also contended that it should not have been penalized for delay in paying Applicant VRMA because it had a reasonable basis for delaying payment. Applicant filed an Answer, disputing Defendant's contentions.

WRIT DENIED January 25, **[**10]** 2000.

By the Court:

"The petition for writ of review and answer have been read and considered by Justices Benke, Nares and McDonald. **[*181]**

Review of a decision of the Workers' Compensation Appeals Board (WCAB) is limited to whether the WCAB acted without or in excess of its powers, and whether the order, decision or

award was unreasonable, not supported by substantial evidence, or procured by fraud. (Lab. Code,n1

----------begin of footnote----------

All statutory references are to the Labor Code.

----------End of footnote----------

On review of a challenge to the sufficiency of the evidence, we determine whether the evidence, when viewed in light of the entire record, supports the decision of the WCAB. We do not reweigh the evidence or decide disputed questions of fact however, we are not bound to accept the WCAB's factual findings if determined to be unreasonable, illogical, improbable or inequitable when viewed in light of the overall statutory scheme. (Mote v. Workers' Comp. Appeals Bd. (1997) 56 Cal. App. 4th 902, 909 [65 Cal. Rptr. 2d 806, 62 Cal. Comp. Cases 891].)

Delta Air Lines (Delta) **[**11]** contends the WCAB erred in determining the vocational rehabilitation benefits it provided Patricia Fox were void. The decision of the WCAB is reasonable and supported by substantial evidence because Delta did not provide Fox with notice 'whether the employer will be able or unable to offer modified or alternative work' which, under section 4636, subdivision (d)(1), is a condition precedent to vocational rehabilitation.

Defendant also contends it should not have been penalized for delay in paying Fox vocational rehabilitation maintenance allowance. Section 5814 authorizes the WCAB to increase and award "when payment is unreasonably delayed or refused." Delta stipulated at trial on September 29, 1998, that it would pay Fox $1,950.00. Delta then unilaterally deducted $780 and issued a check for $1,170 on October 7, 1998. Delta did not make complete payment until November 18, 1998. The penalty imposed is reasonable because there was no basis in Delta's stipulation for it to unilaterally assert a credit.

The petition is denied."

McDonald, Acting P.J.

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COUNSEL: Counsel:For petitioners--Law Offices of Stockwell, Harris, Widom & Woolverton, by B. George Woolverton
For respondent employee--Patricia **[**12]** A. Fox, in pro per

CALIFORNIA COMPENSATION CASES

Liberty Mutual Insurance Company, Pertec Computer Corporation, Petitioners vs. Workers Compensation Appeals Board, Glover Martin, Respondents

Civil No. B130218--

Court of Appeal, Second Appellate District, Division Five

64 Cal. Comp. Cas 680; 1999 Cal. Wrk. Comp. LEXIS 5406

May 11, 1999

PRIOR HISTORY: **[*1]** Prior History: W.C.A.B. No. VNO 080327--WCJ Ralph Zamudio VNO WCAB Panel: Commissioners Casey, Ruggles, Deputy Commissioner Dietrich (not participating)

DISPOSITION: Disposition: Petition for writ of review denied

HEADNOTE: Retroactive Vocational Rehabilitation Temporary Disability--When WCAB found applicant presented prima facie case of entitlement to vocational rehabilitation services for 1978 industrial injury, WCAB relied on Elizondo and awarded retroactive vocational rehabilitation temporary disability benefits for period from date of applicant's demand for services through date of Rehabilitation Unit determination, even though determination was that applicant was not a qualified injured worker within meaning of Labor Code § 4635(a)(1)[Deering's].[See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 7.04[1][b].]
Penalties--Unreasonable Delay--Vocational Rehabilitation Temporary Disability--WCAB found defendants unreasonably delayed paying vocational rehabilitation temporary disability during period of evaluation of applicant's entitlement to vocational rehabilitation services and awarded a Labor Code § 5814[Deering's] penalty on vocational rehabilitation temporary disability, based on **[*2]** Elizondo.[See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.40[3][c].]

Applicant received an industrial injury to his spine and psyche on 7/11/78, while working for Defendant as an industrial relations manager. Applicant requested VR, but Defendants disputed providing these services. On 4/27/98, the RU issued a determination that Applicant was a QIW, relying on AME in psychiatry, Dr. Singer. The RU also awarded retroactive VRTD. Defendants appealed the RU determination to the WCJ.

In the F&O of 11/30/98, the WCJ found Applicant was not a QIW, but awarded retroactive VRTD from 7/24/96 through 4/28/98 and a penalty on the VRTD pursuant to Labor Code § 5814[Deering's].

[681]

Defendants sought reconsideration of the F&O, contending (1) the VRTD award was an error because Applicant did not make a prima facie showing of entitlement to VR services, and (2) there should be no penalty on VRTD because Defendants had genuine medical or legal doubt as to its liability for VRTD.

The WCJ issued a report recommending that the WCAB deny reconsideration. He noted that on 10/30/95, Applicant was awarded 72 1 /2 percent PD based on the range of the evidence from medical **[*3]** reports and the opinions of two AMEs, Drs. Singer (psychiatry) and Stoltz (orthopedics).

The WCJ discussed the two requirements of Labor Code § 4635(a)[Deering's], specifically "medical eligibility" and "vocational feasibility." In discussing the first prong, medical eligibility, the WCJ found from the medical evidence that Applicant needed VR on a psychiatric basis from the 1/14/98 report of Dr. Alfred Bloch. The WCJ also remarked that Applicant testimony at a 8/15/94 hearing indicated that he was far more disabled than that found by the AMEs. However, in light of the orthopedic and psychiatric complaints expressed at that hearing, Applicant did not appear to be "vocationally feasible."

The WCJ noted that Applicant later requested VR services on 7/24/96. The WCJ found Applicant found Applicant was credible, and had established a good faith prima facie case of entitlement to VR at that time, from Dr. Bloch's reports. After Applicant's request, the parties obtained a supplemental report from AME Dr. Singer on VR issues. In substance, Dr. Singer found that Applicant's psychiatric disability had markedly improved as compared to what it had been in 1991. On cross-examination **[*4]** he testified that Applicant's pain disorder, a somatoform condition, now had a minimal impact on him, and Applicant was now medically feasible, and he recommended VR.

The WCJ went on to conclude that while Applicant now met the second requirement of vocational feasibility, he no longer met the first prong of the two-part test requiring medical eligibility. He noted that the AME appeared to have recommended VR simply because Applicant had been away from the open labor market for 19 years and believed it would be beneficial if he received some refresher course so he could return to work as an industrial relations manager without further delay. In that regard, the WCJ remarked that the AME had expressed an incorrect legal opinion. The focus was whether Applicant's expected PD was likely to preclude from engaging in his usual occupation or position in which he was engaged at the time of the injury. In light of the medical evidence presented, Applicant was no longer precluded from returning to his former occupation. Consequently, the WCJ found Applicant was not a QIW and reversed the 4/27/98 decision of the RU on that issue.

However, the WCJ went on to find that Applicant was entitled **[*5]** to retroactive VRTD:

Although Applicant was ultimately found not to be a qualified injured worker for the reasons set forth above, the record reflects there is

[682]substantial evidence to award him retroactive VRTD pending investigation, and determination of his QIW status. In the present case, this would encompass the period from the date of his request, July 24, 1996, until the Determination of the Rehabilitation Unit of April 28, 1998. ...

That an injured worker, who has made a good faith, prima facie showing of qualified injured worker status, is entitled to payment of VRTD during the period of his evaluation for same even though he is ultimately determined not a qualified injured worker, is well established. Industrial Indemnity Co. v. W.C.A.B. (Elizondo) (1985) 165 Cal. App. 3d 633 [211 Cal. Rptr. 683, 50 Cal. Comp. Cases 171]

The WCJ went on to defend his decision to award a penalty:

Given the facts and circumstances of this case and existing case authority, (Elizando), supra and for the reasons stated above, there is substantial evidence to support the finding that Petitioner's failure to pay VRTD beginning July 24, 1996 through April 26, 1998, was unreasonable. It **[*6]** is clear from the record that there was no genuine medical or legal doubt about Petitioner's liability pending determination of Applicant's entitlement to vocational rehabilitation services following his request for same on July 24, 1996. ... Accordingly, Applicant is entitled to 10 percent increased compensation under Labor Code section 5814[Deering's].

The WCJ also noted Defendants did not pay any VRTD to Applicant, justifying a penalty for unreasonable delay under Labor Code § 5814[Deering's]. "It is clear from the record that there was no genuine medical or legal doubt about Petitioner's liability for payment of VRTD pending determination of Applicant's entitlement to vocational rehabilitation services following his request for same on July 24, 1996."

The WCAB panel adopted and incorporated the WCJ's report and denied reconsideration and reconsideration report without further comment.

Defendants filed a Petition for Writ of Review. They repeated the contentions from their Petition for Reconsideration and additionally contended that (1) Dr. Bloch's opinion was not substantial evidence, in part because his opinion was outside his medical specialty, (2) Applicant was not a QIW, **[*7]** and (3) if VRTD should be awarded, it should be awarded from the date of demand through the date of the AME evaluation on VR issues (4/28/97), not the date of the RU determination.

Applicant filed an Answer, disputing Defendants' contentions.

WRIT DENIED and Applicant's requests for attorney's fees and costs DENIED May 11, 1999.

[683]

COUNSEL: Counsel:For petitioners--Law Offices of Sanford & Cognata, by Stephen C. Cohen

For respondent employee--Gordon, Edelstein, Krepack, Grant, Felton & Goldstein, by Irwin L. Goldstein, Adam D. Dombchik